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Security Council Committee established pursuant to resolution 1267 (1999)

Note verbale dated 16 April 2002 from the Permanent Mission of Colombia to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Colombia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) and has the honour to transmit herewith the report submitted by the Government of Colombia pursuant to paragraph 6 of Security Council resolution 1390 (2002) (see annex).

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Annex to the note verbale dated 16 April 2002 from the Permanent Mission of Colombia to the United Nations addressed to the Chairman of the Committee

Report of the Government of Colombia pursuant to Security Council resolution 1390 (2002)

Introduction

Pursuant to paragraph 6 of Security Council resolution 1390 (2002), which requests States to report on the steps they have taken, the Government of Colombia submits the following report on the activities it has carried out to date to implement the measures set out in resolution 1390 (2002).

The Government of Colombia understands that the mandatory measures adopted by the Security Council constitute a valuable tool for effectively combating international terrorism, and therefore attaches priority to taking specific action in this regard.

Administrative measures

With regard to administrative measures taken to freeze funds and other financial assets or economic resources of individuals, groups, undertakings and entities mentioned in the list contained in resolution 1390 (2002) (hereinafter referred to as "the list"), including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, as stipulated in paragraph 2 (a) of the resolution, the Government of Colombia explained in its report to the Counter-Terrorism Committee, that the Ministry of Foreign Affairs and the Superintendence of Banks had asked the various entities of the financial sector to determine whether any of the businesses or persons mentioned in the list had operated in Colombia or had carried out any international transaction with any Colombian national or business.

The Superintendence of Banks inspects and monitors the relevant entities in the financial, insurance, social security and foreign-exchange sectors. It engages in such supervision in order to protect public confidence in those sectors, owing to the general interest in the aforementioned activities.

The entities that are controlled and monitored by the Superintendence of Banks have adopted measures to prevent and suppress the financing of terrorist acts and of persons who commit such acts.

These entities, which include banks, savings and loan companies, commercial financing companies, bonded warehouses and trust funds, have reported that to date, none of the individuals or businesses mentioned in the list have had any relationship with them, nor have they conducted any financial transactions with them.

These entities review the list regularly and fulfil their legal obligation to adopt appropriate and adequate control mechanisms to prevent their regular operations from being utilized in any way to conceal, manage, invest or use money or other assets derived from criminal activities, or to give the appearance of legality to criminal activities or transactions and funds related to such activities.

In addition, we have informed and requested other competent entities, including the Ministry of Foreign Trade, the Ministry of Defence, the Information and Financial Analysis Unit, the National Directorate of Narcotic Drugs, the General Directorate of Civil Aviation, the Office of the Prosecutor-General and the Administrative Department of Security to inform this Ministry if any of the individuals or entities referred to in the list appear in their records, and if so, to take such measures as may be necessary to comply with resolution 1390 (2002).

It should be noted that the work carried out by the Information and Financial Analysis Unit as part of the system of prevention and monitoring, since the purpose of the Unit is to detect, prevent and, in general, suppress money-laundering in all economic activities. To that end, the Unit centralizes, systematizes and analyses information collected pursuant to articles 102 to 107 of the Organic Statute of the Financial System and its regulations concerning remand, tax and customs regulations and other information known to State or private entities that may be linked to money-laundering operations, some of which may be attributed to the operations of terrorist groups.

The foregoing will have greater relevance if one bears in mind that money-laundering involves such ancillary offences as various acts directly related to terrorism, namely, conspiracy to commit an offence (including the financing of terrorists), extortive kidnapping, rebellion and arms trafficking.

Legislative measures

With regard to legislative measures, Colombia has a thorough criminal justice system which provides clear and specific penalties for any punishable acts that may be carried out by individuals, groups or undertakings and entities referred to in the list mentioned in resolution 1390 (2002).

In Colombia, there are no administrative provisions for expropriating assets linked to criminal activities. Any measure taken to obtain for the State the confiscation or termination of ownership — freezing, attachment, seizure, arrest, possession or suspension of dispositive power — of assets linked to illicit activities, must be taken exclusively through judicial channels, in accordance with the provision on termination of ownership rights contained in article 34 of the Political Constitution.

The report submitted by Colombia to the Counter-Terrorism Committee (S/2001/1318) includes a detailed description of the relevant legislation and the activities qualified as offences under Colombian legislation. These include terrorism and acts of terrorism as well as a number of punishable acts for which the penalty is more severe when they are committed for terrorist purposes.

Article 100 of the Penal Code and article 67 of the Code of Criminal Procedure contain the definition of confiscation, which provides that the instruments and assets used to commit the punishable act, or which are derived from the commission of such act and which are not freely tradable, shall be appropriated by the Office of the Prosecutor-General or to an entity designated by that Office, unless the law provides for their destruction or different disposition. A similar measure is applied to intentional offences, when the assets that are freely tradable and belong to the criminally liable person are used to commit a punishable act, or are derived from the commission of such act.

As indicated above, activities that are related to criminal acts, including terrorism, can be the object of confiscation as part of criminal proceedings, in accordance with the provisions of article 67 of the Code of Criminal Procedure. In accordance with this regulation, if the money or assets intended for financing, supporting or managing terrorist activities are material objects of the crime, the State, through the legal definition of confiscation and in the context of a criminal procedure, can claim such assets.

Since confiscation is a punitive measure, the procedure to be followed in expropriating the assets requires a judicial decision (seizure warrant), specifically a judicial order issued as part of criminal proceedings in accordance with the regulations and authority established in the Code of Criminal Procedure.

Criminal confiscation is a limited instrument, since it involves only property belonging to the criminally liable person. However, this difficulty can be overcome if recourse is had to the application of Act No. 333 of 1996; specifically, article 2, subparagraph 4, of the Act refers to the circumstances that warrant criminal confiscation, by establishing as grounds "... *Cases in which assets are used as a means or as instruments to commit criminal acts or which are intended for such purpose, unless they are subject to confiscation or seizure in the context of a criminal procedure in accordance with an enforceable judicial decision*".

The advantages of the termination procedure over the confiscation procedure are well known, since termination of ownership takes place independently of the owner's criminal liability. It would be necessary only to establish the admissibility of the action by demonstrating, through the provision of evidence, the grounds (assets and criminal activities), the title to the assets or financial income and the relation of the owner to such grounds.

With regard to the termination of ownership rights, when acquisition of assets is one of the consequences of the crime, this requires a judicial decision and should, therefore, follow the relevant procedure set out in article 15 of Act No. 333 of 1996. Article 2 of that Act provides that a judicial decision can declare the termination of ownership of illicitly acquired assets, provided that such assets are derived from activities that cause a serious decline in social morality.

Colombian legislation also attaches great importance to the establishment of mechanisms for international cooperation in combating crime. Such mechanisms, which are provided for in the Code of Criminal Procedure, provide the country with an important tool.

Measures to prevent entry or transit

As regards the measures set forth in paragraph 2 (b) of resolution 1390 (2002), the entity that is competent to monitor the entry of foreigners into and transit through Colombian territory is the Administrative Department of Security. Pursuant to a request from the Ministry of Foreign Affairs, the Administrative Department of Security has taken the necessary measures to prevent the entry into or transit through Colombian territory of the persons referred to the aforementioned list. To date, there has been no report of such persons attempting to enter the country.

Measures to prevent the sale of arms and related materiel and the provision of technical advice

The body that is responsible for implementing controls with regard to the supply, sale and transfer of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, as described in paragraph 2 (c) of resolution 1390 (2002), is the Ministry of Defence, which exercises permanent control in order to prevent any kind of illicit operation. This Ministry has received no reports that any of the individuals or entities referred to in the list might have carried out any commercial transaction with such materials or provided any technical advice, assistance or training related to military activities.